

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 229, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between lines 5 and 6, begin a new paragraph and insert:
- 2 **"Sec. 1. As used in this chapter, "commissioner" means the**
- 3 **insurance commissioner appointed under IC 27-1-1-2."**
- 4 Page 1, line 6, delete "1." and insert "2."
- 5 Page 1, line 7, delete "7" and insert "10".
- 6 Page 1, line 9, delete "2." and insert "3."
- 7 Page 1, line 10, delete "7" and insert "10".
- 8 Page 1, between lines 10 and 11, begin a new paragraph and insert:
- 9 **"Sec. 4. As used in this chapter, "examiner" has the meaning set**
- 10 **forth in IC 27-1-3.1-4."**
- 11 Page 1, line 11, delete "3." and insert "5."
- 12 Page 1, line 17, delete "4." and insert "6."
- 13 Page 2, line 8, delete "5." and insert "7."
- 14 Page 2, line 10, delete "7" and insert "10".
- 15 Page 2, line 11, delete "6." and insert "8."
- 16 Page 2, between lines 17 and 18, begin a new paragraph and insert:
- 17 **"Sec. 9. As used in this chapter, "service provider" means an**
- 18 **individual or entity that enters into a contract with a consortium**
- 19 **program to provide to the consortium program:**
- 20 **(1) administrative;**
- 21 **(2) insurance brokerage;**

1 **(3) claims administration;**
 2 **(4) risk control; or**
 3 **(5) investment management;**
 4 **services."**

5 Page 2, line 18, delete "7." and insert "**10.**".

6 Page 2, line 18, delete "five (5)" and insert "**two (2)**".

7 Page 2, line 35, delete "8." and insert "**11.**".

8 Page 2, line 35, delete "body" and insert "**authority**".

9 Page 2, delete lines 37 through 42, begin a new paragraph and insert:

10 **"Sec. 12. Except as provided in this chapter, the development,**
 11 **administration, and operation of a consortium program does not**
 12 **constitute the business of insurance, and a consortium program is**
 13 **not subject to the insurance laws of Indiana.**

14 **Sec. 13. (a) A consortium program shall:**

15 **(1) establish a self-insurance fund with a per claim limit and**
 16 **an aggregate limit on the total amount of self-insured risk**
 17 **retained by the members in a fiscal year; and**

18 **(2) maintain excess insurance coverage that has been reviewed**
 19 **and approved by the commissioner.**

20 **(b) A self-insurance fund established under subsection (a) must**
 21 **be:**

22 **(1) actuarially sound; and**

23 **(2) funded at the beginning of each fiscal year by a**
 24 **contribution from each member in an amount that reflects the**
 25 **member's share of self-insured risk and other costs of the**
 26 **consortium program.**

27 **(c) Annual contributions to the self-insurance fund under**
 28 **subsection (b) must be:**

29 **(1) determined using generally accepted actuarial standards;**
 30 **and**

31 **(2) set to fund, at the beginning of each fiscal year, at least one**
 32 **hundred percent (100%) of the self-insured risk retained by**
 33 **the members in a fiscal year plus the other costs of the**
 34 **consortium program, including premiums for excess**
 35 **insurance coverage.**

36 **Sec. 14. (a) The governing authority of the consortium program**
 37 **shall adopt bylaws, including the following:**

38 **(1) A financial plan setting forth in general terms:**

39 **(A) the types of risks covered under the consortium**
 40 **program;**

41 **(B) the per claim limit and the aggregate limit on the total**
 42 **amount of self-insured risk retained by the consortium**

- 1 program in a fiscal year;
- 2 (C) the minimum amount of excess insurance coverage that
- 3 must be maintained by the consortium program; and
- 4 (D) the procedure for determining each member's annual
- 5 contribution to the self-insurance fund.
- 6 (2) A plan of management that provides for:
- 7 (A) the responsibility of the governing authority with
- 8 regard to:
- 9 (i) maintaining the amount of reserves in the
- 10 self-insurance fund;
- 11 (ii) disposing of surpluses; and
- 12 (iii) administering the consortium program in the event
- 13 of termination;
- 14 (B) the basis on which new members may be admitted to
- 15 the consortium program;
- 16 (C) the basis on which participating members may
- 17 withdraw from the consortium program, including a:
- 18 (i) thirty (30) day period at the end of each fiscal year
- 19 after the consortium program's first year of operation
- 20 during which a member may withdraw; and
- 21 (ii) requirement that a withdrawing member remains
- 22 jointly and severally liable for any claim arising during
- 23 the period during which the withdrawing member was a
- 24 member; and
- 25 (D) other provisions necessary or desirable for the
- 26 operation of the consortium program.
- 27 (3) A conflict of interest policy for:
- 28 (A) employees; and
- 29 (B) service providers;
- 30 of the consortium program.
- 31 (b) The following must be submitted to and approved by the
- 32 commissioner before a consortium program may commence
- 33 operations:
- 34 (1) A copy of the bylaws described in subsection (a).
- 35 (2) The form of any insurance contracts purchased by the
- 36 consortium program, including contracts for excess insurance
- 37 coverage.
- 38 (3) An accounting, based on generally accepted actuarial
- 39 standards, of sufficient reserves committed to pay obligations
- 40 of the consortium program.
- 41 (4) A copy of each coverage document form to be issued by the
- 42 consortium program.

1 **(5) Any other information determined necessary by the**
2 **commissioner.**

3 **(c) If the commissioner does not disapprove the information**
4 **submitted under subsection (b) earlier than thirty (30) days after**
5 **the information is submitted, the information is considered**
6 **approved.**

7 **Sec. 15. (a) A consortium program may enter into a contract**
8 **with a service provider to obtain the services of the service**
9 **provider.**

10 **(b) A contract entered into under subsection (a) must address**
11 **the following:**

12 **(1) The term of the contract.**

13 **(2) The scope of services and responsibilities of the service**
14 **provider.**

15 **(3) Compensation.**

16 **(4) Periodic reporting to the governing authority of the**
17 **consortium program.**

18 **(5) The ownership and confidentiality of information and data**
19 **utilized by the service provider in performing the service**
20 **provider's responsibilities under the contract.**

21 **(6) Compliance with the conflict of interest policy established**
22 **by the consortium program.**

23 **(7) Indemnification of the consortium program for negligence**
24 **of the service provider and proof of errors and omissions**
25 **insurance.**

26 **(8) Assignability of the contract.**

27 **(9) Competition between the service provider and the**
28 **consortium program during and after the term of the**
29 **contract.**

30 **(10) Cancellation of the contract.**

31 **Sec. 16. (a) A consortium program shall have an annual audit**
32 **performed by an independent certified public accounting firm**
33 **according to guidelines established by the department of insurance.**

34 **(b) Not later than one hundred eighty (180) calendar days after**
35 **the close of a consortium program's fiscal year, the consortium**
36 **program must furnish the consortium program's members with**
37 **audited financial statements certified by an independent certified**
38 **public accounting firm.**

39 **(c) Copies of the audit report and certified financial statements**
40 **required under this section must be provided to the commissioner**
41 **and the state board of accounts not later than one hundred eighty**
42 **(180) calendar days after the close of the consortium program's**

1 fiscal year.

2 (d) A consortium program that fails to meet the deadline
3 specified in subsection (c) without having obtained an extension
4 from the commissioner is subject to a civil penalty of fifty dollars
5 (\$50) per day until the required information is received by the
6 commissioner.

7 (e) If a consortium program fails to have the annual audit
8 performed as required by subsection (a), the commissioner shall
9 cause the audit to be performed at the expense of the consortium
10 program.

11 (f) The working papers of the certified public accountant and
12 other records pertaining to the preparation of the audited financial
13 statements required under this section may be reviewed by the
14 commissioner. The cost of a review under this subsection must be
15 paid by the consortium program.

16 Sec. 17. Not later than sixty (60) calendar days after the
17 beginning of a consortium program's fiscal year, the governing
18 authority shall submit the following to the commissioner:

19 (1) A copy of the bylaws adopted by the consortium program.

20 (2) A copy of each coverage document form issued by the
21 consortium program.

22 (3) A copy of the insurance contracts purchased by the
23 consortium program, including contracts for excess insurance
24 coverage.

25 (4) A copy of each service provider contract entered into by
26 the consortium program.

27 (5) A certification by an independent actuary that the reserves
28 in the self-insurance fund are adequate to pay the obligations
29 of the consortium program.

30 Sec. 18. (a) If a consortium program fails to comply with the
31 requirements of this chapter, the commissioner shall issue a notice
32 of noncompliance to the consortium program.

33 (b) Not later than thirty (30) calendar days after a consortium
34 program receives a notice of noncompliance under subsection (a),
35 the consortium program shall file with the commissioner a written
36 request for time to restore compliance and a plan to restore
37 compliance.

38 (c) The commissioner, on receiving the written request and plan
39 to restore compliance filed under subsection (b), may grant a
40 period not longer than one (1) year during which the consortium
41 program may restore compliance.

42 (d) If:

- (1) a plan to restore compliance is not filed under subsection (b);
- (2) a plan to restore compliance is filed under subsection (b) and not approved by the commissioner; or
- (3) a plan to restore compliance is filed under subsection (b) and approved by the commissioner, and at the end of a period granted under subsection (c) the consortium program is not in compliance with this chapter;

the commissioner may act to liquidate or rehabilitate the consortium program under IC 27-9 as if the consortium program were an insurance company.

Sec. 19. (a) The commissioner or an examiner:

- (1) may conduct an examination of a consortium program under IC 27-1-3.1 as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and
- (2) shall conduct an examination of a consortium program under IC 27-1-3.1 at least once every five (5) years.

(b) Upon determining that an examination described in subsection (a) is necessary, the commissioner shall issue an examination warrant:

- (1) appointing one (1) or more examiners to perform the examination; and
- (2) instructing the examiners appointed under subdivision (1) concerning the scope of the examination.

(c) In conducting an examination under this section, an examiner shall observe the requirements set forth in the NAIC examiner's handbook (as defined in IC 27-1-3.1-6), to the extent that the requirements are consistent with this chapter. The commissioner may employ additional guidelines or procedures necessary to determine a consortium program's compliance with this chapter.

Sec. 20. (a) A consortium program is subject to IC 27-4-1 as if the consortium program were an insurance company.

(b) The rights of a claimant under a consortium program are in no event less than the rights of a claimant under an insurance contract issued by an insurance company authorized to do business under IC 27.

Sec. 21. The commissioner shall, not later than February 1 of each year, report to the legislative council in an electronic format under IC 5-14-6. The report must include the following information for the previous calendar year:

- (1) A description of the scope of the market of coverage

1 under:

2 (A) insurance contracts; and

3 (B) consortium programs;

4 serving independent educational institutions.

5 (2) The number of complaints filed against a consortium
6 program under IC 27-4-1.

7 (3) The number of independent educational institutions
8 participating in consortium programs.

9 (4) The loss history of each consortium program.

10 Sec. 22. An insurance producer that conducts business with a
11 consortium program must be licensed as an insurance producer
12 under IC 27-1-15.6.

13 Sec. 23. (a) Motor vehicle coverage provided by a consortium
14 program must provide the ability for a member to respond in
15 damages for liability arising out of the ownership, maintenance, or
16 use of a motor vehicle in amounts at least equal to the amounts
17 required under IC 9-25-4.

18 (b) A member that participates in the motor vehicle coverage
19 provided by a consortium program is considered to meet the
20 financial responsibility requirements set forth in IC 9-25-4, and an
21 application for a certificate of self-insurance under IC 9-25-4-11 is
22 not required.

23 Sec. 24. Information regarding the:

24 (1) part of funds; or

25 (2) liability reserve;

26 established by a consortium program to satisfy a specific claim or
27 cause of action is confidential and is not subject to subpoena or
28 order to produce, except in a supplementary or ancillary
29 proceeding to enforce a judgment.

- 1 **Sec. 25. The department of insurance may adopt rules under**
- 2 **IC 4-22-2 to implement this chapter."**
- 3 Delete page 3.
 (Reference is to SB 229 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 6, Nays 0.

Senator Paul, Chairperson